

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Rule making related to third-party commercial driver's license testers

The Transportation Department hereby amends Chapter 607, "Commercial Driver Licensing," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 307.12 and 321.187 as amended by 2022 Iowa Acts, Senate File 2337.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 321.187 as amended by 2022 Iowa Acts, Senate File 2337.

Purpose and Summary

This rule making updates Chapter 607 to conform the rules with 2022 Iowa Acts, Senate File 2337. This legislation amends Iowa Code section 321.187 to authorize public transit systems and regional public transit systems to be third-party commercial driver's license (CDL) testers, and to allow all third-party testers to administer the CDL knowledge test in addition to the CDL skills test. Under this legislation, any CDL knowledge or skills test offered by a third party must be the same as the test administered by the Department.

The amendments provide that public and regional transit systems may be certified by the Department to be third-party CDL testers and allow all third-party testers to be certified by the Department to administer CDL knowledge tests in addition to CDL skills tests. These amendments adopt definitions for "knowledge test," "public transit system" and "regional transit system" and amend a few existing definitions to align with the definitions amended within Iowa Code section 321.187. To implement and align the existing rules with the expanded third-party testing functions, the amendments update references to skills testing to include knowledge testing and update references to the Federal Motor Carrier Safety Regulations in 49 CFR Parts 383 and 384.

The rule making also clarifies that the existing requirement to maintain a \$50,000 bond is applicable only to a third-party tester that is not a government agency in accordance with federal regulations.

The amendments add a new paragraph concerning the revocation of a certificate of authority issued by the Department to a third-party knowledge test examiner if the examiner does not meet certain minimum federal requirements relating to examiner qualifications, training and protocols for suspected fraudulent activity. These amendments also require the Department to revoke the certificate of authority for a third-party test examiner to administer knowledge or skills tests if the examiner fraudulently administers either type of test.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 21, 2022, as **ARC 6519C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on November 9, 2022.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa beyond any impact anticipated by the legislation.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 761—Chapter 11.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on January 4, 2023.

The following rule-making actions are adopted:

ITEM 1. Amend rule 761—607.30(321) as follows:

761—607.30(321) Third-party testing.

607.30(1) Purpose and definitions. The knowledge tests required by rule 761—607.27(321) and the skills test required by rule 761—607.28(321) may be administered by third-party testers and third-party skills test examiners approved and certified by the department. For the purpose of administering third-party skills testing and this rule, the following definitions shall apply:

“Community college” means an Iowa community college established under Iowa Code chapter 260C.

“Iowa-based motor carrier” means a motor carrier or its subsidiary that has its principal place of business in the state of Iowa and operates a permanent commercial driver training facility in the state of Iowa.

“Iowa nonprofit corporation” means a nonprofit corporation that serves as a trade association for Iowa-based motor carriers.

“Knowledge test” means the knowledge tests required by rule 761—607.27(321).

“Motor carrier” means the same as defined in 49 CFR Section 390.5.

“Permanent commercial driver training facility” means a facility dedicated to a program of commercial driving instruction that is offered to employees or potential employees of the motor carrier as incident to the motor carrier's commercial operations, that requires at least 40 hours of instruction, and that includes fixed and permanent structures and facilities for the off-road portions of commercial driving instruction, including classroom, pretrip inspection, and basic vehicle control skills. A permanent commercial driver training facility must include a fixed and paved or otherwise hard-surfaced area for basic vehicle control skills testing that is permanently marked and capable of inspection and measurement by the department.

“Public transit system” means the same as defined in Iowa Code section 324A.1.

“Regional transit system” means the same as defined in Iowa Code section 324A.1.

“Skills test” means the skills test required by rule 761—607.28(321).

“*Subsidiary*” means a company that is partly or wholly owned by a motor carrier that holds a controlling interest in the subsidiary company.

“*Third-party skills test examiner*” means the same as defined in ~~49 CFR Section 383.5~~ Iowa Code section 321.187 as amended by 2022 Iowa Acts, Senate File 2337.

“*Third-party tester*” means the same as defined in ~~49 CFR Section 383.5~~ Iowa Code section 321.187 as amended by 2022 Iowa Acts, Senate File 2337.

607.30(2) Certification of third-party testers.

a. The department may certify as a third-party tester a community college, Iowa-based motor carrier, ~~or Iowa nonprofit corporation, public transit system or regional transit system~~ to administer knowledge tests and skills tests. A community college, Iowa-based motor carrier, ~~or Iowa nonprofit corporation, public transit system or regional transit system~~ that seeks certification as a third-party tester shall contact the motor vehicle division and schedule a review of the proposed testing program, which shall include the proposed testing courses and facilities, information sufficient to identify all proposed third-party ~~skills test examiners~~, and any other information necessary to demonstrate compliance with ~~49 CFR Section 383.75~~ Parts 383 and 384 applicable to knowledge and skills testing.

b. No community college, Iowa-based motor carrier, ~~or Iowa nonprofit corporation, public transit system or regional transit system~~ shall be certified to conduct third-party testing unless and until the community college, Iowa-based motor carrier, ~~or Iowa nonprofit corporation, public transit system or regional transit system~~ enters an agreement with the department that meets the requirements of 49 CFR Section 383.75 and demonstrates sufficient ability to conduct knowledge and skills tests in a manner that consistently meets the requirements of ~~49 CFR Section 383.75~~ Parts 383 and 384 applicable to knowledge and skills testing.

c. The department shall issue a certified third-party tester a certificate of authority that identifies the classes and types of vehicles for which knowledge and skills tests may be administered. The certificate shall be valid for the duration of the agreement executed pursuant to paragraph 607.30(2) “b,” unless revoked by the department for engaging in fraudulent activities related to conducting knowledge and skills tests or failing to comply with the requirements, qualifications, and standards of this chapter, the agreement, or ~~49 CFR Section 383.75~~ Parts 383 and 384 applicable to knowledge and skills testing.

607.30(3) Certification of third-party skills test examiners.

a. A certified third-party tester shall not employ or otherwise use as a third-party ~~skills test examiner~~ a person who has not been approved and certified by the department to administer knowledge or skills tests. Each certified third-party tester shall submit for approval the names of all proposed third-party ~~skills test examiners~~ to the department. The department shall not approve as a third-party ~~skills test examiner~~ a person who does not meet the requirements, qualifications, and standards of ~~49 CFR Sections 383.75 and 384.228~~ Parts 383 and 384 applicable to knowledge and skills testing, including but not limited to all required training and examination and a nationwide criminal background check. The criteria for passing the nationwide criminal background check shall include no felony convictions within the last ten years and no convictions involving fraudulent activities.

b. The department shall issue a certificate of authority for each person certified as a third-party ~~skills test examiner~~ that identifies the certified third-party tester for which the person will administer knowledge or skills tests and the classes and types of vehicles for which the person may administer knowledge or skills tests. The certificate shall be valid for a period of four years from the date of issuance of the certificate.

c. The department shall revoke the certificate of authority for a third-party test examiner to administer skills tests if the person holding the certificate does not administer skills tests to at least ten different applicants per calendar year; does not successfully complete the refresher training required by 49 CFR Section 384.228 every four years; is involved in fraudulent activities related to conducting knowledge or skills tests; or otherwise fails to comply with and meet the requirements, qualifications and standards of this chapter or ~~49 CFR Sections 383.75 and 384.228~~ Parts 383 and 384 applicable to skills testing. Notwithstanding anything in this paragraph to the contrary, as provided in 49 CFR Section 383.75, if the person does not administer skills tests to at least ten different applicants per calendar year, the certificate will not be revoked for that reason if the person provides proof of completion of the

examiner refresher training in 49 CFR Section 384.228 to the department or successfully completes one skills test under the observation of a department examiner.

d. The department shall revoke the certificate of authority for a third-party test examiner to administer knowledge tests if the person holding the certificate does not successfully complete the refresher training required by 49 CFR Section 384.228 every four years, is involved in fraudulent activities related to conducting knowledge or skills tests or otherwise fails to comply with and meet the requirements, qualifications and standards of this chapter or 49 CFR Parts 383 and 384 applicable to knowledge testing.

d. e. A third-party skills test examiner certified by the department to administer skills tests who is also a skills instructor shall not administer a skills test to an applicant who received skills training from that third-party skills test examiner.

e. f. A third-party skills test examiner may only administer CDL skills tests for the examiner's primary employer, unless authorized by the department to administer CDL skills tests for another county or third-party tester.

607.30(4) Bond. As a condition of certification in accordance with 49 CFR Section 383.75, ~~an Iowa-based motor carrier or Iowa nonprofit corporation~~ a third-party tester that is not a government agency as defined in Iowa Code section 553.3 must maintain a bond in the amount of \$50,000 to pay for the retesting of drivers in the event that the third-party tester or one or more of its third-party skills test examiners are involved in fraudulent activities related to conducting skills tests of CDL applicants ~~for a commercial driver's license.~~

607.30(5) Limitation applicable to Iowa-based motor carriers. An Iowa-based motor carrier certified as a third-party tester may only administer the knowledge or skills test to persons who are enrolled in the Iowa-based motor carrier's commercial driving instruction program and shall not administer knowledge or skills tests to persons who are not enrolled in that program.

607.30(6) Training and refresher training for third-party skills test examiners. All training and refresher training required under this rule shall be provided by the department, in form and content that meet the recommendations of the American Association of Motor Vehicle Administrators' International Third-Party Examiner/Tester Certification Program.

This rule is intended to implement Iowa Code section 321.187 as amended by 2022 Iowa Acts, Senate File 2337, section 1.

ITEM 2. Amend rule 761—607.31(321) as follows:

761—607.31(321) Test results.

607.31(1) to 607.31(3) No change.

607.31(4) Skills Knowledge and skills test results from certified third-party testers. A third-party skills tester certified under rule 761—607.30(321) shall transmit the skills test results of tests administered by the third-party tester through secure electronic means determined by the department. The department may retest any person who has passed a knowledge or skills test administered by a certified third-party tester if it appears to the department that the knowledge or skills test administered by the third-party tester was administered fraudulently or improperly, and as needed to meet the third-party skills test examiner oversight requirements of 49 CFR ~~Section 383.75(a)(5)~~ Parts 383 and 384 applicable to knowledge and skills testing.

607.31(5) No change.

This rule is intended to implement Iowa Code sections 321.180, 321.186, 321.187 as amended by 2022 Iowa Acts, Senate File 2337, section 1, 321.188 and 321.201.

[Filed 11/9/22, effective 1/4/23]

[Published 11/30/22]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/30/22.